



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23-3]

Donn Bullens, J.R., N.P.; Decision and Order

On September 7, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Donn Bullens, Jr., N.P. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MB4611744 at the registered address of 227 Babcock Street, Brookline, MA 02446. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "currently without authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated February 22, 2023.¹

FINDINGS OF FACT

On September 7, 2021, the Massachusetts Drug Control Program issued a letter to Registrant accepting Registrant's voluntary surrender of his Massachusetts controlled substance registration (hereinafter, MCSR). RFAAX 3, Attachment D.² According to Massachusetts

¹ On November 1, 2022, Registrant represented that he was not served with the OSC until October 21, 2022, and requested a thirty-day extension to determine whether to request a hearing. RFAAX 4, at 1. On November 7, 2022, the Government filed a Notice of Filing of Evidence Regarding Proof of Service agreeing that Registrant had not been served with the OSC until October 21, 2022 and thus that Registrant's extension request was timely. *Id.* On November 7, 2022, Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ) issued an Order Granting in Part [Registrant's] Extension Request to File a Request for Hearing that gave Registrant until 2:00 p.m. on December 5, 2022 to file a Request for Hearing. *Id.* at 1, 3. On December 6, 2022, the ALJ issued an Order Terminating Proceedings, indicating that, as of December 6, 2022, Registrant had not filed anything with the tribunal. RFAAX 5, at 1.

² The letter states, "[u]pon receipt of this letter, you are no longer authorized to prescribe, distribute, possess, dispense or administer controlled substances in Massachusetts." *Id.* On September 9, 2021, Registrant signed the letter to confirm that he had received it and had voluntarily surrendered his MCSR as of that date. *Id.* Further, on September 9, 2021, the Massachusetts Board of Registration in Nursing issued an Order of Summary Suspension

online records, of which the Agency takes official notice, Registrant's MCSR was voluntarily surrendered and is expired.³ Massachusetts Health Professions License Verification Site, <https://madph.mylicense.com/verification> (last visited date of signature of this Order).⁴

Accordingly, the Agency finds that Registrant is not authorized to handle controlled substances in Massachusetts, the state in which he is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).⁵

and Notice of Hearing that suspended both Registrant's Massachusetts registered nurse license and Registrant's Massachusetts certified nurse practitioner authorization. RFAAX 3, Attachment E, at 1 and 4.

³ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁴ Further, both Registrant's Massachusetts registered nurse license and Registrant's Massachusetts certified nurse practitioner authorization are listed as suspended and expired. *Id.*

⁵ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1) (this section, formerly § 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. No. 117-215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense

According to the Massachusetts Controlled Substances Act, “every person who manufactures, distributes or dispenses, or possesses with intent to manufacture, distribute or dispense any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations . . .” Mass. Gen. Laws. ch. 94C, § 7(a) (2022). Further, “[a] prescription for a controlled substance may be issued only by a practitioner who is: 1) authorized to prescribe controlled substances; and 2) registered pursuant to the provisions of [the Massachusetts Controlled Substances Act].” *Id.* at § 18(a).

Here, the undisputed evidence in the record is that Registrant lacks authority to handle controlled substances in Massachusetts because Registrant voluntarily surrendered his MCSR and his MCSR has expired. As already discussed, a practitioner must hold a valid controlled substance registration to dispense a controlled substance in Massachusetts. Thus, because Registrant lacks state authority to handle controlled substances, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MB4611744 issued to Donn Bullens, Jr., N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Donn Bullens, Jr., N.P., to renew or modify this registration, as well as any other pending application of Donn Bullens, Jr., N.P., for additional registration in Massachusetts. This Order is effective **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

SIGNING AUTHORITY

controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

[FR Doc. 2023-07501 Filed: 4/10/2023 8:45 am; Publication Date: 4/11/2023]